

ADVISORY OPINION 91-14 [1991-6]

The Ethics Commission has received your request for advice dated March 25, 1991. Your request relates the following facts: You are the head of a principal office of the Executive Branch of County Government. The Democratic Central Committee nominated you, along with four others, to serve on the Montgomery County Commission on Redistricting. On January 29, 1991, the County Council appointed you to serve on the Commission. The purpose of the Commission on Redistricting is to submit a plan to the Council proposing new Councilmanic election districts.

You have asked if your membership on the Commission violates the Ethics Law, violates a Council resolution, or constitutes an appearance of a conflict of interest.

Montgomery County Charter Section 104 requires that Council district boundaries be redrawn every ten years. Section 104 charges the Council with the responsibility of appointing a commission to propose a redistricting plan. The plan submitted by the Commission is adopted if the Council fails to establish another plan within a certain period of time. Section 104 requires the Council to appoint three members from a list of five names submitted by the Central Committees of each major political party.

The office which you head is designated as a principal office or department in the Executive Branch of government by Section 1A-201.¹ As a department head, you are appointed by the County Executive and serve at the pleasure of the County Executive. You are outside the County merit system. See, Sections 215 and 401 of the Montgomery County Charter. As a department head, you are clearly accountable to the County Executive, not the County Council.

Article III of the Montgomery County Public Ethics Law sets out rules of conduct for public employees. The Ethics Commission has reviewed each section within Article III and finds that your participation as a member of the Commission on Redistricting does not violate any provision of the Montgomery County Public Ethics Law.

The Ethics Commission understands that your second question concerning a “Council resolution” refers to Resolution No. 11-108, adopted on February 24, 1987. That resolution concerns the appointment of County employees to boards, committees, and commissions.

Section 19A-3 of the Montgomery County Public Ethics Law provides:

“If any other County statute or regulation relating to conflicts of interest . . . is more stringent than this law, the more stringent provision applies.”

The question is whether Resolution No. 11-108 is either a “statute or regulation” which would bring it within the purview of the Ethics Law. Clearly, the Resolution is not

¹ Unless otherwise indicated, section references are to the Montgomery County Code (1984).

a County statute. The Ethics Commission finds that the Resolution is not a regulation either, because:

- (1) Section 2A-15 sets out the process for adopting a County regulation. That process requires publication of the regulation in the County Register and following a specific procedure for the review and approval of a County regulation. The process was not followed in the adoption of Resolution No. 11-108.
- (2) Regulations are commonly understood to mean a restriction or rule that imposes a control or direction. Ballentine's Law Dictionary (3rd Ed.). Paragraph 3(c) of Resolution 11-108 provides, "An appointment or confirmation is not void because it is contrary to this resolution." On the basis of this provision, the Ethics Commission concludes that Resolution 11-108 would not qualify as a regulation as that term is commonly understood because it is not mandatory.

Accordingly, the Ethics Commission does not believe that Resolution 11-108 is an ethical standard that has been made a part of the County ethics law by Section 19A-3.

Section 19A-7 authorizes the Ethics Commission to give advice concerning the application of the ethics law to the person requesting the opinion. Therefore, the Ethics Commission believes that it is beyond its purview to comment on the relationship between your appointment to the Commission on Redistricting and Resolution No. 11-108.

As indicated, the ethics law establishes specific rules of conduct for public employees to follow. So long as those rules are strictly followed, the Commission has no power to render an advisory opinion regarding whether or not your membership on the Commission on Redistricting creates an appearance of a conflict of interest.

The Ethics Commission trusts that it has responded to your inquiries. If you have further questions, please do not hesitate to contact the Commission.

Date of Issue: May 15, 1991